IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.113 OF 1998

Dr.M.S.Kothari. .... Appellant.

Versus.

M/s.Vincent Construction Pvt.Ltd.
and others. .... Respondents.

Shri U.M.Mahajan i/by M/s.Divekar & Co.for the Appellant.

None for the Respondents.

CORAM : ABHAY S. OKA, J.

DATED : 17th January, 2005.

P.C.:

1. Heard the learned Counsel for the Appellant. The office noting shows that the notice of the Respondents is received back with Bailiff's remark "refused to accept notice". Office has treated it as good service and placed the Appeal for final hearing.

2. By preferring this Appeal from Order, the Appellant has taken exception to the Judgment and Order dated 2nd December 1997 passed by the learned Judge of the City Civil Court, Mumbai. By the said order the learned trial Judge granted temporary injunction against the Appellant from starting/opening any Clinic/Nursing Home or carrying on any commercial activity in the suit flat and from changing user thereof from the residence to commercial. The Appellant was also restrained by an order of temporary injunction from carrying on any

permanent additions and alterations or making any structural changes without permission from the Plaintiffs and from the Bombay Municipal Corporation.

3. The record shows that Civil Application No.1049 of 1998 was filed along with the Appeal by the Appellant praying for stay of execution and operation of the impugned order. By order dated 4th February 1998 which was passed after hearing the Counsel appearing for the Respondents, this Court stayed operation of the impugned order. It appears that the said order of stay is in force till today. Thus the impugned order passed by the trial Court has remained stayed for last about 7 years. The suit is of the year 1997. Therefore, after lapse of 8 years, now the order of injunction cannot be revived.

4. As the suit is pending in the City Civil Court I am not making any observations on merits of the controversy involved. Therefore, the Appeal can be disposed of by directing that the order of stay of this Court will continue to operate till disposal of the suit. However, it is made clear that in case the Appellant desires to carry out any permanent additions and alterations or structural changes requiring permission of the Competent Authority, the same shall not be carried out without prior permission of the Competent Authority.

5. Hence the Appeal is disposed of by the following order:

(i) The order of stay granted by this Court in Civil Application No.1049 of 1998 by order dated 6th December 1998 will continue to operate till the disposal of the suit.

(ii) In the event, the Appellant desires to carry out any additions and alteration in the suit flat which require permission of the Competent Authority, the Appellant shall not carry out such additions and alternations without obtaining permission of the Competent Authority.

(iii) The Appeal is disposed of in the above terms with no order as to costs.

(iv) It is made clear that the suit will be decided by the trial Court on its own merits without being influenced by the impugned order or grant of stay of the impugned order by this Court.

(v) Parties and the trial Court to act on authenticated copy of this Court.

(vi) Certified copy expedited.

Judge.